

BELCO PETROLEUM CORP.

IBLA 81-253

Decided August 5, 1981

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting competitive oil and gas lease bid. NM 42413.

Affirmed.

1. Accounts: Payments -- Oil and Gas Leases: Competitive Leases --
Payments: Generally

A personal check is not an acceptable form of remittance under 43 CFR 3120.1-4(b) requiring a successful bidder to submit one-fifth of the amount bid as a deposit and must result in rejection of the competitive bid.

APPEARANCES: James P. Miller, Esq., Houston, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Belco Petroleum Corporation has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated November 13, 1980, rejecting its competitive oil and gas lease bid for parcel No. 6 (NM 42413) because appellant submitted one-fifth of the amount bid, required as a deposit pursuant to 43 CFR 3120.1-4(b), in the form of a personal check. BLM stated that "[b]y submitting a personal check, Belco retained control of its fund until presentation and final payment." Appellant had been declared the high bidder for parcel No. 6 at a competitive oil and gas lease sale on September 16, 1980, with a bid of \$60,000.

In its statement of reasons for appeal, appellant does not dispute that it submitted a personal check for \$12,000; rather, it contends that this is an "insignificant matter which should not be sufficient reason for the rejection of a high bid at a KGS sale." Appellant asserts that its error was the result of an oversight because it had only 1 week after notice of the sale to review the tracts, to select parcels, and to prepare appropriate bids. Moreover, appellant argues that it maintained a balance exceeding \$12,000 in its bank account from the date of the sale until rejection of its bid and that "Belco in its accounting

practices did not retain control of the said \$12,000 and had, in effect, given up control of such funds."

[1] The applicable regulation, 43 CFR 3120.1-4(b), provides that a successful bidder "must submit with his bid the following: Certified check on a solvent bank, money order, or cash, for one fifth of the amount bid by him." In Mesa Petroleum Co., 37 IBLA 103 (1978), we held that failure to submit the deposit in the appropriate form must result in the rejection of the competitive bid. We concluded that the requirement could not be waived because the form used by appellant therein (sight draft) gave it an "unfair advantage over other bidders," allowing it to retain use and control of its funds until the draft was accepted and paid, while other bidders lost control of their funds. Mesa Petroleum Co., supra at 106.

In Ross L. Kinnaman, 48 IBLA 239, 241 (1980), we held that even though a personal money order was "equivalent to a personal check" to the extent it permitted the bidder to retain the use and control of his funds, it was an acceptable form of remittance because it could properly be held to fall within the term "money order" under 43 CFR 3120.1-4(b). We concluded that the term "money order" did not necessarily imply a guaranteed remittance.

The personal check in the present instance does not fall within any of the stated acceptable remittances in 43 CFR 3120.1-4(b). 1/ Compare with William E. Jeffers, Jr., 46 IBLA 322 (1980). Moreover, a check is a type of sight draft, William E. Jeffers, Jr., supra at 323, and use of it partakes of the same inherent unfairness that we held in Mesa Petroleum Co., supra, must result in the rejection of the competitive bid. The fact that Belco may have in its accounting practices "given up control of such funds" does not change the result in this case.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

1/ 43 CFR 1822.1-2(b) generally provides that "[p]ersonal checks are an acceptable form of remittance except where the regulations in this chapter specifically provide otherwise."

